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VETERANS BENEFITS ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS (VA),
BEFORE THE COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

July 18, 2023

Good afternoon, Chairman Bost, Ranking Member Takano, and other Members of the Committee. Thank you for inviting us here today to present our views on two bills that would affect VA programs and services. Joining me today is David Barrans, Chief Counsel, Benefits Law Group, Office of the General Counsel.

H.R. 705 “Veterans 2nd Amendment Protection Act”

H.R. 705 would create a new section under Title 38 of the United States Code. Section 5501B would prohibit VA from transmitting a beneficiary’s personally identifiable information, based on a determination to pay benefits to a VA-appointed fiduciary under 38 U.S.C. § 5502, to the Department of Justice (DOJ) for use by the national instant criminal background check system (NICS), unless there is an order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others. While the underlying reporting requirements of the Brady Handgun Violence Prevention Act (Brady Act) and associated regulations would remain, the bill would prevent VA from complying with those requirements absent the required judicial order.

VA opposes this bill. VA recognizes the important policy considerations underlying the Brady Act, see 34 U.S.C. § 40901, and this bill, and defers to DOJ on the central policy and public safety issues associated. Any further discussion on this legislation should also include DOJ (specifically the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI)).

Currently, VA reports all individuals determined unable to manage their funds to NICS based on regulations issued by ATF (see 27 C.F.R. § 478.11(a)) and guidance provided by DOJ (see March 2013 Guidance to Agencies Regarding Submission of Relevant Federal Records to NICS). In addition to complying with Federal law, this reporting policy is a matter of Veteran safety. With VA’s top clinical priority being Veteran suicide prevention, VA continues a “*whole of VA*” approach to preventing Veteran suicide that integrates strategic planning, program operations and program evaluation across VA, including VHA, VBA and NCA.¹ This strategy focuses on the

¹ See [2022 National Veteran Suicide Prevention Annual Report, VA Suicide Prevention, Office of Mental Health and Suicide Prevention, September 2022](#) and Department of Veterans Affairs. (2018). *National*

safety of America's Veterans with an emphasis on preventative measures. Scientific research has shown that mental health issues are one clear risk factor for suicide and use of a firearm in a suicide attempt significantly reduces the chance of survival. It is VA's mission to care for our Veterans and their families and the removal of required reporting of Veterans to DOJ would run counter to this.

For example, a 2018 study examined the public safety rationale for a Federal policy of prohibiting gun sales to Veterans with mental health concerns who are assigned a fiduciary to manage their benefits from VA.² The policy was evaluated utilizing data from 3,200 post-deployment Veterans from the Iraq and Afghanistan war era. This study determined that intellectual disability, drug abuse, and acute psychopathology were associated with increased suicidal ideation and violence risk in Veterans who were identified as needing a fiduciary; and acute psychopathology was found to have a significant association when other factors were controlled for in the analyses. In consideration of these findings and to provide utmost protection to this vulnerable population, VA recommends that NICS reporting continue for those individuals determined to be incompetent and require the appointment of a VA fiduciary, with an option for the Veteran to request relief from NICS restrictions.²

VA understands this bill to support a separate requirement for a judicial evaluation regarding whether a beneficiary is a danger to themselves or others, however, this information may not be readily available to the VA claims processor during the adjudication process. VA adjudications concerning the need for the appointment of a fiduciary are based on whether a beneficiary can manage their VA benefits and handle their own financial affairs. A study involving 1,388 Iraq and Afghanistan War Era Veterans who completed a national survey on post-deployment adjustment indicated that probable major depressive disorder, posttraumatic stress disorder and traumatic brain injury were associated with financial difficulties.⁴ This study also found an association between poor money management and self-reported recent suicidal ideation and physical aggression. Given this finding, elimination of the NICS reporting requirements could be detrimental to Veterans.

A VA determination that a beneficiary cannot manage their own VA benefits is based upon a definitive finding regarding that fact by a responsible medical authority or medical evidence that is clear, convincing, and leaves no doubt as to the person's inability to manage their affairs, including disbursement of funds without limitation, or a

Strategy for Preventing Veteran Suicide. Avail at: [National Strategy for Preventing Veteran Suicide \(va.gov\)](https://www.va.gov/national-strategy-for-preventing-veteran-suicide/).

² See Swanson J, Easter M, Brancu M; VA Mid-Atlantic MIRECC Workgroup; Fairbank JA. Informing Federal Policy on Firearm Restrictions for Veterans with Fiduciaries: Risk Indicators in the Post-Deployment Mental Health Study. *Adm Policy Ment Health*. 2018. Avail at: [Informing Federal Policy on Firearm Restrictions for Veterans with Fiduciaries: Risk Indicators in the Post-Deployment Mental Health Study](https://pubmed.ncbi.nlm.nih.gov/31811111/)

³ See Elbogen EB, Johnson SC, Wagner HR, Newton VM, Beckham JC. *Financial well-being and postdeployment adjustment among Iraq and Afghanistan war veterans*. *Mil Med*. (2012). Avail: [Financial well-being and postdeployment adjustment among Iraq and Afghanistan war veterans - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/22111111/)

court order finding the individual to be incompetent. See 38 C.F.R. § 3.353(c) and (e). Prior to the final rating of incompetency, the beneficiary is provided a due process period to allow the submission of evidence to support a finding of competency. However, if the beneficiary is deemed to be incompetent VA's reporting to NICS based on Brady Act requirements and regulations currently in place allows for VA to operate out of an abundance of caution regarding protections offered to such beneficiaries. Additionally, VA provides beneficiaries who have been determined to be unable to manage their VA funds the ability to request relief from NICS restrictions. When deciding a request for relief, VA considers not only the beneficiary's desire to own firearms and/or ammunition, but also the safety of the beneficiary, their family, and the community.

Given VA's focus on reducing suicide risk among veterans, studies linking financial issues with some mental health concerns, and study findings showing the lethality of suicide attempts when firearms are used, VA opposes this bill. If this bill is advanced, VA notes that the effective date of the bill should be no earlier than nine months after enactment to allow for necessary information technology system enhancements. System enhancements would be required to terminate the current automated process of NICS reporting, which is tied to incompetency determinations.

No mandatory or discretionary costs are associated with this draft bill.

H.R. XXXX "Ernest Peltz Accrued Veterans Benefits Act"

This bill would change the effective date for a discontinuance of pension, by reason of the death of a payee entitled to pension based on an existing rating or decision, from the last day of the month before such death occurs to the last day of the month in which the death occurs. The bill would also provide that, in these circumstances, an amount equal to the difference between the amount of pension to which the Veteran would have been entitled for the month of death had the Veteran not died, and the amount of the check or other payment issued to the surviving spouse shall be treated in the same manner as an accrued benefit.

VA opposes this bill. This bill would result in different discontinuance dates—and therefore disparate treatment—between (1) beneficiaries in receipt of pension based on an existing rating or decision and (2) beneficiaries in receipt of compensation or dependency and indemnity compensation (DIC). For beneficiaries in receipt of pension based on an existing rating or decision, the discontinuance date would be the last day of the month of death; for beneficiaries in receipt of compensation or DIC, the discontinuance date would be the last day of the month *before* death.

Similarly, the bill would result in disparate treatment between (1) beneficiaries in receipt of pension based on an existing rating or decision and (2) beneficiaries that are determined to be entitled to pension following an evaluation for accrued benefits. In other words, the bill would result in different discontinuance dates based on when

pension entitlement is determined.

In addition, the bill would create incongruity as it relates to the month-of-death benefit by functionally eliminating that benefit in certain circumstances. The bill would effectively discontinue the month-of-death benefit, provided under 38 U.S.C. § 5310, for the surviving spouse of a Veteran in receipt of pension based on an existing rating or decision, while the month-of-death benefit for the surviving spouse of a Veteran in receipt of compensation would remain unchanged. This would result in a disparity between beneficiaries in equivalent situations aside from the benefit type the Veteran happened to be receiving at the time of death.

Moreover, the amount that used to be the month-of-death benefit for the surviving spouse of a Veteran in receipt of pension based on an existing rating or decision would now be processed as an accrued benefit. This change in processing would introduce automation and program limitations, which would slow down the receipt of the benefit in question and, as such, be detrimental to the individual recognized as the spouse on file at the time of the Veteran's death. A surviving spouse who would have been able to benefit from expedited processing of a month-of-death benefit will be disadvantaged by the processing impacts of this bill. Ultimately, this bill's functional elimination of the month-of-death benefit for certain beneficiaries would be detrimental rather than favorable. It would result in surviving spouses of Veterans in receipt of pension at the time of death having to file for, and be found entitled to, accrued benefits in order to receive the benefit payment associated with the month in which the Veteran dies. In contrast, the current month-of-death benefit may be paid automatically to the spouse on file and does not require that spouse to file a claim.

Finally, if this bill is advanced, VA requests that the effective date of the bill be no earlier than nine months after enactment, to allow for necessary system enhancements. System enhancements would be required to stop the current automation of month-of-death payments in these cases; automation would continue to grant impacted benefits until those enhancements are in effect.

Conclusion

This concludes my statement. We thank the committee for your continued support of programs that serve our Nation's Veterans and look forward to working together to further enhance delivery of benefits and services.